

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 99-406V

E-Filed: February 14, 2012

* * * * *

NATHAN HOUSE, *

* UNPUBLISHED

Petitioner, *

* Joint Stipulation on Damages;

v. *

* Hepatitis B Vaccine,

* Crohn's Disease

SECRETARY OF HEALTH *

AND HUMAN SERVICES, *

*

Respondent. *

* * * * *

Clifford Shoemaker, Vienna, VA, for petitioner.

Lisa Watts, Washington, DC, for respondent.

DECISION¹

Campbell-Smith, Chief Special Master

On June 28, 1999, petitioner, Nathan House, filed a petition seeking compensation under the National Vaccine Injury Compensation Program² (the Vaccine Program or the

¹ Because this decision contains a reasoned explanation for the undersigned's action in this case, the undersigned intends to post this decision on the United States Court of Federal Claims' website, in accordance with the E-Government Act of 2002, Pub. L. No. 107-347, § 205, 116 Stat. 2899, 2913 (codified as amended at 44 U.S.C. § 3501 note (2006)). As provided by Vaccine Rule 18(b), each party has 14 days within which to request redaction "of any information furnished by that party: (1) that is a trade secret or commercial or financial in substance and is privileged or confidential; or (2) that includes medical files or similar files, the disclosure of which would constitute a clearly unwarranted invasion of privacy." Vaccine Rule 18(b). Otherwise, "the entire" decision will be available to the public. Id.

Act). Petitioner claims that as a result of the hepatitis B vaccine series³ he received, he “experienced flu-like symptoms, joint pain, diarrhea and fever.” Petition (Pet.) at 1, ¶ 3. Petitioner asserts that his symptoms worsened after each vaccination and led to his development of Crohn’s disease. Id. at 1-2, ¶3.

On February 28, 2011, the undersigned issued a decision denying compensation in this matter, which was reissued on March 3, 2011, to include footnote 12, identifying Federal Circuit precedent addressing the meaning of term “substantial factor,” as used in the undersigned’s discussion of causation under the Vaccine Act. On March 14, 2011, petitioner filed a Motion to Redact Entitlement Decision (Motion to Redact) pursuant to Vaccine Rule 18(b). On March 30, 2011, petitioner’s counsel filed a Motion for Review of the undersigned’s entitlement decision denying compensation.

On August 29, 2011, Judge George Miller reversed the undersigned’s decision denying compensation and remanded the claim for further proceedings. On November 14, 2011, the parties informed the undersigned that they had reached a tentative agreement in this case and requested the issuance of a 15-week order to allow for the filing of a stipulation.

On January 11, 2012, the undersigned issued an order denying petitioner’s motion to redact her original entitlement decision.

On February 14, 2012, counsel for both parties filed a stipulation, stating that a decision should be entered awarding compensation. The parties stipulated that petitioner shall receive the following compensation:

A lump sum of \$ 250,000.00 in the form of a check payable to petitioner. This amount represents compensation for all damages that would be available under 42 U.S.C. §300aa-15(a) to which petitioner would be entitled

Stipulation ¶ 8.

The undersigned approves the requested amount for petitioner’s compensation.

² The National Vaccine Injury Compensation Program is set forth in Part 2 of the National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755, codified as amended, 42 U.S.C. § 300aa-10 through § 300aa-34 (2006) (Vaccine Act or the Act). All citations in this decision to individual sections of the Vaccine Act are to 42 U.S.C. § 300aa.

³ The dates of vaccination were September 9, 1993, October 22, 1993, and February 24, 1994.

Accordingly, an award should be made in the form of a check payable to petitioner in the amount of \$250,000.00. In the absence of a motion for review filed pursuant to RCFC Appendix B, the clerk of the court **SHALL ENTER JUDGMENT** in accordance with the terms of the parties' stipulation.⁴

IT IS SO ORDERED.

s/Patricia E. Campbell-Smith
Patricia E. Campbell-Smith
Chief Special Master

⁴ Pursuant to Vaccine Rule 11(a), entry of judgment is expedited by the parties' joint filing of notice renouncing the right to seek review.

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

OFFICE OF SPECIAL MASTERS

NATHAN HOUSE, *
*
*
Petitioner, * ECF
*
v. * No. 99-406V
* Chief Special Master
* Campbell-Smith
SECRETARY OF HEALTH *
AND HUMAN SERVICES, * Judge George W. Miller
*
Respondent. *

STIPULATION

The parties hereby stipulate to the following matters:

1. Nathan House ("petitioner") filed a petition for vaccine compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. § 300aa-10 to 34, as amended (the "Vaccine Program"). The petition seeks compensation for injuries allegedly related to his receipt of Hepatitis B ("Hep B") vaccine, which vaccine is contained in the Vaccine Injury Table (the "Table"), 42 C.F.R. § 100.3(a).
2. Petitioner received Hep B vaccines on September 9, 1993, October 22, 1993, and February 24, 1994.
3. The vaccines were administered within the United States.
4. Petitioner alleges that he suffered Crohn's disease that was caused-in-fact by receipt of one or more of the Hep B vaccines he received. Petitioner further alleges that he suffered residual effects of this injury for more than six months.

5. Petitioner represents that there has been no prior award or settlement of a civil action for damages as a result of his condition.

6. Respondent denies that petitioner's claimed injuries were caused by the Hep B vaccine, and denies that petitioner's current disabilities are sequelae of his alleged injury.

7. Maintaining their above-stated positions, the parties nevertheless now agree that the issues between them shall be settled and that a decision should be entered awarding the compensation described in paragraph 8 of this Stipulation.

8. As soon as practicable after an entry of judgment reflecting a decision consistent with the terms of this Stipulation, and after petitioner has filed an election to receive compensation pursuant to 42 U.S.C. § 300aa-21(a)(1), the Secretary of Health and Human Services will issue the following vaccine compensation payment:

A lump sum of ~~\$250,000.00~~ in the form of a check payable to petitioner. This amount represents compensation for all damages that would be available under 42 U.S.C. §300aa-15(a).

9. As soon as practicable after the entry of judgment on entitlement in this case, and after petitioner has filed both a proper and timely election to receive compensation pursuant to 42 U.S.C. § 300aa-21(a)(1), and an application, the parties will submit to further proceedings before the special master to award reasonable attorneys' fees and costs incurred in proceeding upon this petition.

10. Petitioner and his attorney represent that compensation to be provided pursuant to this Stipulation is not for any items or services for which the Program is not primarily liable under 42 U.S.C. § 300aa-15(g), to the extent that payment has been made or can reasonably be expected to be made under any State compensation programs, insurance policies, Federal or State health

benefits programs (other than Title XIX of the Social Security Act (42 U.S.C. § 1396 et seq.)), or by entities that provide health services on a pre-paid basis.

11. Payments made pursuant to paragraph 8 and any amounts awarded pursuant to paragraph 9 of this Stipulation will be made in accordance with 42 U.S.C. § 300aa-15(i), subject to the availability of sufficient statutory funds.

12. The parties and their attorneys further agree and stipulate that, except for any award for attorneys' fees and litigation costs, the money provided pursuant to this Stipulation will be used solely for the benefit of petitioner as contemplated by a strict construction of 42 U.S.C. § 300aa-15(a) and (d), and subject to the conditions of 42 U.S.C. § 300aa-15(g) and (h).

13. In return for the payments described in paragraphs 8 and 9, petitioner, in his individual capacity and on behalf of his heirs, executors, administrators, successors or assigns, does forever irrevocably and unconditionally release, acquit and discharge the United States and the Secretary of Health and Human Services from any and all actions or causes of action (including agreements, judgments, claims, damages, loss of services, expenses and all demands of whatever kind or nature) that have been brought, could have been brought, or could be timely brought in the Court of Federal Claims, under the National Vaccine Injury Compensation Program, 42 U.S.C. § 300aa-10 et seq., on account of, or in any way growing out of, any and all known or unknown, suspected or unsuspected personal injuries to or death of petitioner resulting from, or alleged to have resulted from the Hep B vaccines administered to him on September 9, 1993, October 22, 1993, and February 24, 1994, as alleged in a petition for vaccine compensation filed on or about June 28, 1999, in the United States Court of Federal Claims as petition No. 99-406V.

14. If petitioner should die prior to entry of judgment, this agreement shall be voidable

upon proper notice to the Court on behalf of either or both of the parties.

15. If the special master fails to issue a decision in complete conformity with the terms of this Stipulation or if the Court of Federal Claims fails to enter judgment in conformity with a decision that is in complete conformity with the terms of this Stipulation, then the parties' settlement and this Stipulation shall be voidable at the sole discretion of either party.

16. This Stipulation expresses a full and complete negotiated settlement of liability and damages claimed under the National Childhood Vaccine Injury Act of 1986, as amended. There is absolutely no agreement on the part of the parties hereto to make any payment or to do any act or thing other than is herein expressly stated and clearly agreed to. The parties further agree and understand that the award described in this Stipulation may reflect a compromise of the parties' respective positions as to liability and/or amount of damages, and further, that a change in the nature of the injury or condition or in the items of compensation sought, is not grounds to modify or revise this agreement.

17. This Stipulation shall not be construed as an admission by the United States or the Secretary of Health and Human Services that the Hep B vaccines administered to petitioner on September 9, 1993, October 22, 1993, and February 24, 1994, caused any injuries (to include Crohn's disease), or that his current disabilities are sequelae of any alleged vaccine injuries.

18. All rights and obligations of petitioner hereunder shall apply equally to petitioner's heirs, executors, administrators, successors, and/or assigns.

END OF STIPULATION

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Respectfully submitted,

PETITIONER:



NATHAN HOUSE


**ATTORNEY OF RECORD FOR
PETITIONER:**



CLIFFORD J. SHOEMAKER, ESQ.

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Dated: 2-14-2012